

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHAEL BURGESS,

Plaintiffs,

v.

GUIITERREZ, *et al.*,

Defendants.

Case No. 3:20-cv-00175-MMD-CLB

ORDER

Plaintiff is an incarcerated person who initiated this action *pro se*. (ECF No. 1-1.) On March 19, 2020, the Court issued an order directing Plaintiff to file a complaint and a completed application to proceed *in forma pauperis* or pay the full filing fee of \$400 within 60 days from the date of that order. (ECF No. 3 at 2.) The 60-day period has now expired, and Plaintiff has not filed a complaint, an application to proceed *in forma pauperis*, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with

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1 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming  
2 dismissal for lack of prosecution and failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey  
4 a court order, or failure to comply with local rules, the court must consider several factors:  
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See  
8 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the Court finds that the first two factors, the public's interest in expeditiously  
11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
14 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
15 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring  
16 disposition of cases on their merits—is greatly outweighed by the factors in favor of  
17 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the  
18 court's order will result in dismissal satisfies the "consideration of alternatives"  
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
20 at 1424. The Court's order requiring Plaintiff to file a complaint and an application to  
21 proceed *in forma pauperis* or pay the full filing fee within 60 days expressly stated: "IT IS  
22 FURTHER ORDERED that if Plaintiff does not timely comply with this order, dismissal of  
23 this action may result." (ECF No. 3 at 2). Thus, Plaintiff had adequate warning that  
24 dismissal would result from his noncompliance with the Court's order to file a complaint  
25 and an application to proceed *in forma pauperis* or pay the full filing fee within 60 days.

26 It is therefore ordered that this action is dismissed without prejudice based on  
27 Plaintiff's failure to file a complaint and an application to proceed *in forma pauperis* or pay  
28 the full filing fee in compliance with this Court's order, dated March 19, 2020.

1 It is further ordered that the Clerk of Court enter judgment accordingly.

2 DATED THIS 27<sup>th</sup> day of May 2020.

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5 MIRANDA M. DU  
6 CHIEF UNITED STATES DISTRICT JUDGE  
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